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U.S. House of Representatives

SUBCOMMITTEE ON MANPOWER AND CIVIL SERVICE
OF THE
COMMITTEE ON POST OFFICE AND CIVIL SERVICE

Washington, D.C. 20515

Executive Registry

70-2672/8

June 30, 1970

Honorable L. Mendel Rivers
Chairman, Committee on Armed Services
House of Representatives
Washington, D. C.

Dear Mr. Chairman:

This is to acknowledge and to thank you for your letter of June 24, 1970, concerning S. 782, a bill to protect the civilian employees of the Executive Branch of the Federal Government.

I will certainly call to the attention of the Subcommittee Members your thought relating to the possible conflict between S. 782 and the authorities and responsibilities now with the Director of Central Intelligence as provided by provisions of law already pertaining to the CIA, as well as the impact of S. 782, as passed by the Senate, on the National Security Agency.

Mr. Chairman, I can assure you that I will make every effort to exempt these agencies from the provisions of S. 782.

With continued best wishes, I am

Sincerely yours,



David N. Henderson
Chairman

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JORGE L. CORDOVA, PUERTO RICO

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U.S. House of Representatives
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Washington, D.C. 20515
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ONETA L. STOCKSTILL, EXECUTIVE SECRETARY

June 24, 1970

The Honorable David N. Henderson, Chairman
Subcommittee on Manpower and Civil Service
Committee on Post Office and Civil Service
House of Representatives
Washington, D. C.

Dear Mr. Chairman:

On June 18, 1968, I wrote to you concerning S. 1035, a bill to protect the civilian employees of the Executive Branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasion of their privacy. I want to reaffirm the statements set forth in that letter, a copy of which is enclosed herewith for your ready reference, as they now apply to S. 782, which was passed by the Senate on May 19, 1970, and I understand is now being considered by your Subcommittee.

Subjecting the Central Intelligence Agency and the Director of Central Intelligence to the adversary proceedings provided for in S. 782 raises a serious question of statutory interpretation concerning possible conflict between S. 782 and the authorities and responsibilities now reposed in the Director by the provisions of law already pertaining to the CIA.

It is also my view that inclusion of the National Security Agency in the provisions of S. 782 would seriously weaken that Agency's effort to effectively protect its intelligence gathering capability.

I fully appreciate that S. 782 is an improvement over previous legislation on the subject (S.1035), but the adversary procedures which it authorizes pose the same critical problems inherent in the previous legislation. Thus, these Agencies must either remain silent in the face

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of unfounded allegations (with the alleged offending officer taking the consequences of the sanctions embodied in the bill), or it must divulge information which it is obligated by statute to protect and disclosure of which might damage the national intelligence effort.

As I stated in my letter of June 18, 1968, I think there would be virtually unanimous objection by the members of the Armed Services Committee to the inclusion of the Central Intelligence Agency and the National Security Agency in this bill. Therefore, in the interest of avoiding possible acrimonious debate on the floor of the House, I strongly urge the complete exemption of both of these Agencies from the provisions of the bill.

I would appreciate an early expression of your views on this matter.

Sincerely,

/s/ L. Mendel Rivers
Chairman

Enclosures
LMR:fsk

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June 18, 1968

The Honorable David N. Henderson, Chairman
Subcommittee on Manpower and Civil Service
Committee on Post Office and Civil Service
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

As you know, I have for a number of years been closely following the affairs of the Central Intelligence Agency, first as a member and later as Chairman of the Subcommittee responsible for legislative oversight of the Agency's activities. In view of these responsibilities, I am much concerned over some of the implications for the Agency of S. 1035 (a bill to protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy).

As passed by the Senate, S. 1035 contained provisions which would hamper the Agency from inquiring into the personal associations, activities, finances, and habits of employees or applicants. In my judgment it is essential that these matters be carefully considered if the Agency is to have an adequate personnel security program, and if it is to defend itself against hostile intelligence operations of which our own intelligence community is the prime target.

I am sure you are aware of the necessity that CIA personnel be people of special competence, integrity and security consciousness. This is not only because of their responsibilities, but because we know that hostile intelligence services assign the highest priority to identifying and exploiting any vulnerabilities they may have. Over the years I have been particularly impressed by the high calibre of Agency personnel, and I think one of the Director's most important responsibilities is the preservation of these high personnel standards.

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There are two sections of the bill which I find particularly troublesome. Section 4 permits suits in a U.S. district court by any employee or applicant who alleges that an officer of the Executive Branch has violated or threatened to violate provisions of the act, without regard to whether remedies have been sought through administrative channels. Section 5 establishes a Board of Employees' Rights to investigate complaints on behalf of any person claiming a violation of the act; this Board would have authority to suspend or remove officers guilty of violations of the bill. These essentially adversary proceedings, whether involving suit in a district court or proceedings before a review board, would inevitably entail serious security problems and would undermine the very statutory safeguards which Congress has established to prevent certain disclosures about the Agency.

S. 1035 raises the persistent legislative problem of striking a proper balance between the rights of the individual and the requirements of the national interest. These considerations were weighed and the problem resolved (properly, in my opinion) when Congress imposed upon the Director of Central Intelligence the statutory responsibility to "terminate the employment of any officer or employee of the Agency whenever he shall deem such termination necessary or advisable in the interests of the United States,...", exempted the Director from the provisions of law which "require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency:..." and gave finality not subject to review of any court of determinations made by the Director "authorized by the provisions of the Central Intelligence Agency Retirement Act."

Subjecting the Central Intelligence Agency and the Director of Central Intelligence to the adversary proceedings provided for in S. 1035 raises a serious question of statutory interpretation concerning possible conflict between S. 1035 and the authorities and responsibilities now reposed in the Director by the provisions of law already pertaining to the CIA. In addition, there is the practical problem that adversary proceedings may provide a basis for harassing the Agency by entangling it in lawsuits throughout the United States through the simple mechanism of arranging for an employment interview followed by a grievance complaint.

We all know of the great concern expressed from time to time by the Congress over loose security practices and procedures in the Government which caused serious damage to the national interest. As

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a result, special security regulations and standards of employee suitability have been developed. These measures have, during recent years, guided our efforts to frustrate the aggressive operations of hostile intelligence services. While these measures have by no means been completely successful, I believe that without them damage to our national security might have reached most serious proportions. The security damage suffered by some of our friends and allies abroad who have not adopted comparable measures is a grim reminder of the high stakes involved in the continuing efforts of all major powers to protect their own secrets while penetrating those of their adversaries.

The National Security Act of 1947, as amended, provides that "...the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure;..." (Section 102(d)(3)). Since this is a responsibility which has been specifically imposed upon the Director of Central Intelligence by the Congress of the United States, my CIA Subcommittee and I are interested in assuring that it is effectively discharged. Although I appreciate the general purposes of S. 1035, there is no question in my mind that in its present form it conflicts with the statutory responsibilities now imposed upon the Director of Central Intelligence.

I think that the interests of our mutual responsibilities would be greatly served by avoiding possibly acrimonious debate on the Floor of the House by reason of what I think would be the virtually unanimous objection of the Members of the Armed Services Committee to the inclusion of the Central Intelligence Agency in this bill.

I would appreciate an early expression of your views on this important matter.

Sincerely,

/s/ L. Mendel Rivers
Chairman

LMR:pk

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3	Director <i>has seen</i>	7/13	W		
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5					
6	Legislative Counsel				
ACTION		DIRECT REPLY		PREPARE REPLY	
APPROVAL		DISPATCH		RECOMMENDATION	
COMMENT		FILE		RETURN	
CONCURRENCE		INFORMATION		SIGNATURE	
<p>Remarks:</p> <p style="text-align: center; padding-top: 50px;">Attached for your information are copies of exchange between Chairmen Rivers and Henderson re the Ervin bill.</p>					
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John M. Maury, Legislative Counsel				7/8/70	
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